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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Part 90 of the)
Commission's Rules to Facilitate)
Future Development of SMR Systems)
in the 800 MHz Frequency Band)

PR Docket No. 93-144

and

Implementation of Section 309(j))
of the Communications Act -)
Competitive Bidding)
800 MHz SMR)

PP Docket No. 93-253

To: The Commission

COMMENTS
OF THE
PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION

Respectfully submitted,

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TABLE OF CONTENTS

SUMMARY	iii
I. BACKGROUND	2
A. The Commission's Initial Proceedings	3
B. NABER's Comments In GN Docket No. 93-252	4
C. The Commission's Current Proposal	6
II. COMMENTS	8
A. Overview Of This Proceeding	8
B. PCIA 800 MHz Wide-Area Licensing Proposal	10
1. No Mandatory Relocation Of Incumbent Licensees	10
2. Channel Blocks	12
3. General Category Channels	15
4. Assignment Mechanism And Opposition To Auctions	17
5. Wide-Area License - Definition Of Geographic Areas	19
III. CONCLUSION	21

SUMMARY

The Personal Communications Industry Association ("PCIA"), continues to support a form of wide-area licensing which allows existing licensees flexibility in site selection and growth possibilities, reduces speculative filings and reduces the Commission's burden to process applications quickly. However, PCIA continues its adamant opposition to the mandatory relocation proposal submitted by Nextel.

While PCIA supports assigning blocks of spectrum on a wide-area basis, PCIA believes that the Commission's 50 channel block proposal is too large to permit licensees to participate in wide-area licensing and create marketplace competition. PCIA supports a maximum channel block of 10 channels to be licensed in a geographic area.

PCIA recommends that the Commission accept applications in two phases. In Phase 1, existing licensees would have the opportunity to ask for a wide-area license to convert existing operations into wide-area operations. A Phase 1 license would be a modification of an existing license on such channels in the market. In Phase 2, the Commission could accept applications for areas and frequencies which were not assigned wide-area licenses in Phase 1.

As expressed herein, PCIA opposes the assignment of 800 MHz wide-area licenses through an auction process. First, the Commission would be prohibited by 47 U.S.C. §309(j) from conducting an auction with regard to the Phase 1 applications proposed by PCIA. However, issuing Phase 1 licenses in the manner suggested

by PCIA would be consistent with 47 U.S.C. §309(j)(6)(E), which requires the Commission to "... continue to use engineering solutions, negotiation, threshold qualifications, service regulations, and other means in order to avoid mutual exclusivity in licensing proceedings."

Congress clearly stated that the Commission should limit auctions to "initial" applications. Here, the Commission is issuing licenses "on top of" existing authorizations, as 800 MHz SMR Pool licenses have been issued for virtually every inhabited area of the country. Thus, the wide-area licenses, either Phase 1 or Phase 2, cannot be regarded as initial licenses and should not be subject to auction.

PCIA believes that the Commission's proposal to issue licenses on a Major Trading Area ("MTA") basis is too large for a reasonable build-out by licensees. As one option, PCIA believes that the use of the Metropolitan Service Area ("MSA") concept can be utilized. First, MSA's represent more natural wireless service areas. However, in the largest urban areas MSA's are still too small for natural operational areas. In such areas, PCIA suggests the use of Consolidated Metropolitan Service Areas ("CMSA").

A second alternative to MTAs and BTAs would be for the Commission to use the "Basic Economic Areas" ("BEA") recently defined by the Department of Commerce which is also more closely akin to the normal pattern of wide-area wireless service areas and could be utilized for the issuance of wide-area 800 MHz licenses.

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OF THE
PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION

The Personal Communications Industry Association ("PCIA"),¹
pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R.
§1.415, respectfully submits its Comments in response to the

¹The National Association of Business and Educational Radio, Inc. ("NABER") and PCIA recently announced the decision to merge their two organizations and to operate under the PCIA name as a new legal entity. Pending final legal and regulatory approvals the two organizations remain separate legal entities. This new PCIA is an international trade association created to represent the interests of both commercial mobile radio service (CMRS) and private mobile radio service (PMRS) users and businesses involved in all facets of the personal communications industry. PCIA's Federation of Councils include: the Paging and Narrowband PCS Alliance, the Broadband PCS Alliance, the Specialized Mobile Radio Alliance, the Site Owners and Managers Association, the Association of Wireless System Integrators, the Association of Communications Technicians, and the Private System Users Alliance. In addition, NABER is the FCC-appointed frequency coordinator for the 450-512 MHz bands in the Business Radio Service, the 800 and 900 MHz Business Pools, 800 MHz General Category frequencies for Business eligibles and conventional SMR systems, and for the 929 MHz paging frequencies.

Further Notice of Proposed Rule Making issued by the Federal Communications Commission in the above-captioned proceeding.²

Although PCIA generally supports the concept of wide-area licensing, the association objects to several significant aspects of the Commission's proposals including: (1) auctioning of the 800 MHz spectrum; (2) extended implementation for transmitter based licensees; and (3) restrictions on eligibility for General Category Pool Channels. These and other views are expressed in this context.

I. BACKGROUND

In preparing its Comments in this proceeding, PCIA's Specialized Mobile Radio Alliance ("SMRA") established a Task Force which was charged with the responsibility of reviewing the Commission's proposal and exploring options for wide-area licensing. The Task Force consisted of wide-area SMR licensees (Dial Call, Racom and US Mobilenet) as well as independent SMR licensees (Banks Tower Communications, Ltd. and Peacock's Radio and Wild's Computer Service, Inc.). The SMRA Council, which consists of additional wide-area licensees (Geotek, Ardis) and independent operators (Two Way Radio Communications and Electronics, Smartlink, Uniden) has also reviewed these Comments. Further, PCIA's Private Radio Users Alliance ("PSUA") Council has also reviewed PCIA's proposal in this proceeding. Thus, PCIA's positions in this

²59 FR 60111 (November 22, 1994). An extension of the filing date was granted by Order of the Acting Chief, Land Mobile and Microwave Division, Private Radio Bureau, released November 28, 1994. 59 FR 63974 (December 12 1994).

proceeding were arrived at through discussions about various ideological differences with a broad cross-section of the 800 MHz radio industry.³

A. The Commission's Initial Proceedings

In its original Notice of Proposed Rule Making in PR Docket No. 93-144,⁴ the Commission proposed to issue SMR Pool licenses on a service-area basis instead of the traditional, transmitter-based license. However, in May of 1994 the Commission recognized that the high volume of applications it received during 1993 and 1994 had resulted in the licensing of virtually all 800 MHz SMR Pool channels across the country.⁵ Therefore, in GN Docket No. 93-252 the Commission asked whether a wide-area type licensing approach is still feasible.

In GN Docket No. 93-252, the Commission's initially proposed to retain the existing channel assignment rules for traditional SMR Systems and to create a wide-area, multi-channel SMR assignment mechanism, using Major Trading Areas ("MTAs"). As an alternative, the Commission proposed to permit 800 MHz licensees to operate in a self-defined service area, with an extended implementation plan.

³Although some Council and Task Force members may have differing opinions on some of the specific recommendations, the Council and Task Force supported the overall concepts and views as expressed herein.

⁴Notice of Proposed Rule Making, PR Docket No. 93-144, 8 FCC Rcd 3950 (1993).

⁵See, Further Notice of Proposed Rule Making, GN Docket No. 93-252, 9 FCC 2863 (1994). See also, NABER's Petition for Rule Making, filed March 6, 1992; NABER's Comments in RM-8387, filed December 9, 1993.

B. NABER's Comments In GN Docket No. 93-252

In its initial Comments in GN Docket No. 93-252, NABER stated that it generally supported the concept of service-area licensing (just as NABER had supported the Commission's attempts to achieve service-area licensing in PR Docket No. 93-144). NABER's Comments presented a concept of how a service-area licensing plan could work.

NABER proposed a voluntary relocation program, based upon a wide-area licensee exchanging spectrum with other licensees. In its Comments, NABER supported a service-area based license for any SMR licensee (regardless of whether the licensee is implementing a digital system or wishes to remain an analog operator) who could "clear off" a channel. A service area license would allow existing SMR systems to expand or, at the very least, avoid being surrounded at close distances by other carriers. NABER stated its adamant opposition to the Nextel proposal in GN Docket No. 93-253, wherein Nextel recommended that non-wide area licensees in the 861/865 MHz band be required to move to 856/860 MHz spectrum, as NABER believed that the proposal would not serve the goals of the SMR industry in general.

Transmitter-based licensees would not be required to move under NABER's original proposal, and would be grandfathered for their existing authorizations. Any move would be voluntary. Modifications would be limited by the geographic boundaries of surrounding service-area based licensees. In addition, NABER proposed that there be incentives for some transmitter-based

licensees to relocate to other frequencies. For example, many transmitter-based licensees are surrounded by an ESMR licensee at very short co-channel spacings which were obtained under the Commission's former "short-spacing" rules. By moving to a 856/860 MHz frequency which is surrendered by the ESMR, the licensee would no longer be a high-powered "island" surrounded by low-power stations. All further short-spacing on the 856/860 MHz spectrum would be under the Commission's new short-spacing table, which would give the relocated licensee much more protection and flexibility. Further, the "changeout" could help minimize adjacent channel interference, which has been discussed as a potential problem with digital equipment.⁶

NABER stated that it is important that the Commission permit new service-area based licensees in the 861/865 MHz band to the extent that spectrum remains available. This would allow existing transmitter-based licensees who do not currently have wide-area licenses to combine with other licensees on the same frequencies to create wide-area systems, if they so desire. NABER stated its belief the marketplace should dictate whether it is feasible for existing licensees to negotiate the creation of wide-area systems.

NABER opposed making any move from the 861/865 MHz band to the 856/860 MHz band mandatory, as proposed by Nextel, Inc. Such a requirement would only prevent existing, analog licensees from

⁶This proposal is similar to NABER's recommendation in the Part 90 "Refarming" proceeding (PR Docket No. 92-235). In that proceeding, NABER stated that a licensee should be permitted to buy out or move co-channel licensees in order to achieve exclusivity.

combining and converting to wide-area operation. NABER recognized that in many large urban areas, there may not even be sufficient spectrum for all transmitter-site 861/865 MHz licensees to relocate to 856/860 MHz. This is one of the reasons why the plan must be voluntary.

Under NABER's original proposal, traditional analog SMR licensees would be able to obtain their own service-area license if they could clear off one or more channels regardless of whether they wished to convert to digital operation. Thus, NABER's original proposal permits more licensees to obtain the type of wide-area authorizations currently enjoyed by Nextel and others. NABER believed that its proposal is of significant benefit to the small SMR operator. The original proposal would also help to stem the flow of some of the "application mill" filings and should eventually reduce or eliminate waiting lists in many secondary markets.

C. The Commission's Current Proposal

The Commission's proposal as expressed in the October 4, 1994 Further Notice of Proposed Rule Making ("FNPRM") is similar in many regards to NABER's original proposal. The Commission proposed to:

- ▶ Designate the 861-865 MHz contiguous SMR spectrum in the SMR Pool for licensing in four 50 channel blocks in each MTA.
- ▶ Designate the remaining 80 non-contiguous 800 MHz SMR Category channels for local licensing on a channel-by-channel, transmitter specific basis.
- ▶ Dispose of mutually exclusive initial applications for all 800 MHz SMR licenses (both MTA-based and local) through competitive bidding.

- Grant the following rights as part of each MTA license: (1) the right to construct at any available site (given short-spacing limitations with incumbents) within the MTA, and to add, subtract, or move site locations within the MTA during the license term, on a "self-coordinated" basis; (2) the right to use any available spectrum within the licensee's designated spectrum block on a self-coordinated basis, including full discretion over channelization of available spectrum within the block (subject to co-channel interference protection of incumbent licensees); (3) the right to use any spectrum within the MTA block that is recovered by the Commission from an incumbent SMR licensee in the event of termination of the incumbent's license; and (4) the right to negotiate to acquire incumbent systems within the MTA block.
- Establish a five-year construction period for MTA licensees from the date the MTA license is granted, with licensees required to provide coverage to one-third of the population within their MTA within three years after initial grant of the MTA license and to two-thirds of their population by the end of the five-year period, and with licenses subject to cancellation for failure to meet these interim coverage requirements.
- Allow incumbent SMR systems within each MTA block to continue operating at previously authorized sites and on previously authorized channels, and require MTA licensees to provide co-channel interference protection to such facilities.
- On the 80 locally licensed channels, limit applicants to obtaining five channels at a time within any geographic area and require all such channels to be constructed and operating before additional channels can be obtained in the same area; require construction and commencement of operations within 12 months of license grant; and, discontinue acceptance of applications for extended implementation under Section 90.629 of the Commission's rules.
- Prohibit new use of the General Category channels for commercial operation. Alternatively, designate a portion of the General Category for commercial operation only.
- Prohibit extended implementation periods for the "lower 80" SMR Pool channels.

The major concepts expressed in the Commission's proposal are consistent with NABER's original proposal. Thus, as discussed

below, PCIA generally supports the wide-area concept proposed in the FNPRM, with several significant exceptions regarding the General Category channels, auctioning of 800 MHz spectrum, and prohibiting extended implementation schedules for transmitter-based licenses. Further, PCIA reiterates herein its opposition to any mandatory relocation requirement.

II. COMMENTS

A. Overview Of This Proceeding

This proceeding was originally designed to investigate ways to process SMR applications more efficiently and to enable SMR operations to grow and offer advanced services without the need to file applications (and suffer long waiting periods) for every minor change in the operational configuration of a system.

As demonstrated in the ex parte exhibits previously filed by PCIA (NABER) and many other entities, this proceeding involves spectrum which has already been licensed in all but the most rural areas. There is little, if any, "white space" in the United States where an 800 MHz SMR Pool frequency is not currently licensed. Thus, this proceeding does not seek to create an assignment mechanism for "virgin" spectrum. Rather, the proceeding seeks a means by which existing licensees can more efficiently license, construct and modify their stations in order to be more competitive in the wireless marketplace.

It should be the goal of the Commission in this proceeding to craft new rules which refrain from sacrificing existing operators for the sake of trying to raise money through the auction process.

It appears that the Chairman of the Commission recognizes this goal. On December 1, 1994, the Commission released a statement by the Chairman that stated that the Commission's goal in holding auctions is not to raise revenues, but to create competition in mobile services by awarding licenses efficiently and quickly. The auctioning of 800 MHz spectrum will not accomplish these goals.

The 800 MHz SMR marketplace is the most competitive frequency band licensed by the Commission to wireless entrepreneurs. As the Commission has seen from recent ex parte communications by PCIA (NABER), SMR Won and individual operators, there remain a large number of small independent businesses operating at 800 MHz, despite the recent trend towards consolidation.

In addition, the Commission should recognize that there can be multiple competitive service providers of a variety of sizes in a single market. The Commission's goal should not be to create by legislative fiat a single, jumbo SMR carrier to compete with cellular providers.⁷ Rather, the Commission should recognize that a competitive marketplace can exist with both large and small SMR operators, just as there are different size companies competing in every other enterprise in the United States.

⁷Such a result would not be objectionable if it should occur in the natural evolution of the marketplace. In such an event, the marketplace would be working in this industry as it does in other industries. However, the financial community has recently expressed serious doubts about the ability of a single, jumbo SMR carrier to offer any realistic competition to cellular. For Nextel, '94 Was Best of Times and Worst of Times, Wall Street Journal, January 3, 1995 at p. A14. In fact, Nextel has recently publicly acknowledged this fact. Id.

B. PCIA 800 MHz Wide-Area Licensing Proposal

1. No Mandatory Relocation Of Incumbent Licensees

PCIA continues to support a form of wide-area licensing which allows existing licensees flexibility in site selection and growth possibilities, reduces speculative filings and reduces the Commission's burden to process applications quickly. However, PCIA continues its adamant opposition to the mandatory relocation proposal submitted by Nextel. PCIA is pleased that the Commission has not initially proposed to include the mandatory relocation provision requested by Nextel, however PCIA is concerned that the Commission has requested comments on the issue.

There has not been a single SMR issue in the past three years that has generated the amount of PCIA member interest as the Nextel mandatory relocation proposal. Many members of the SMRA Section of PCIA have called and written to PCIA staff members informing the staff members that the proposal would devastate their businesses.

A mandatory relocation requirement only serves Nextel, as Nextel is the only entity with enough 856/860 MHz spectrum to move incumbents. The mandatory relocation proposal does not increase the value of the spectrum to anyone but Nextel in an auction. Instead, it creates an uneven playing field by making channels more valuable to Nextel alone, advantaging one entity over others. The relocation requirement would limit participation in the wide-area licensing process to Nextel. Small SMR licensees would not be able to participate, as such entities do not have spectrum available to which to move Nextel. Potential applicants which are currently not

800 MHz SMR operators would similarly be discouraged from participation.

The result of a mandatory relocation rule would be to completely devalue every transmitter-based license in the 861-865 MHz band. There will not be any entity interested in acquiring an SMR operation if the entity is aware that the system will be required to move to a different set of frequencies determined by Nextel. Further, obtaining loans for businesses would be impossible under such circumstances. PCIA members do not believe that the Commission should be responsible for maintaining the value of licenses which it issues, however the Commission should similarly not be in the business of undermining such value. The Commission should not disturb marketplace forces, which may dictate that independent licensees should change frequencies, sell out, network with other systems or just attempt to compete as independent businesses.

Some parties have argued that mandatory relocation is necessary in order to create a contiguous block of spectrum. One of the rationales expressed for contiguous spectrum is that the Motorola MIRS equipment which Nextel is implementing has had difficulty accommodating adjacent channel licensees. However, as discussed below, in at least one-third of the country the Commission cannot create contiguous spectrum in the 800 MHz band.

In the Mexican border area (defined as 68.4 miles from the border),⁸ the Commission assigns channels 12.5 kHz offset from the

⁸47 C.F.R. §90.619(a).

channels available in the rest of the United States. More importantly, the 861/865 MHz band is not assigned to the SMR Pool only. Rather, the 861/865.7000 through 861/865.9500 MHz portion of the band is assigned to the SMR Pool, with the remainder assigned to the Business, Industrial/Land Transportation and Public Safety Pools. As a result, any SMR system operating less than 135 miles from the border will be unable to enjoy the benefits of contiguous spectrum, as there will always be non-SMR licensees using adjacent channels.

A similar problem exists in the Canadian border area (defined as 87 miles from the border).⁹ In the Canadian border area, there are eight (8) different license "regions", each of which has different pool allocations, resulting in difficulties in creating contiguous spectrum over 150 miles from the border. The Canadian and Mexican border assignments are the result of treaty negotiations, therefore, if the goal is contiguous spectrum, it cannot be achieved in a major portion of the country.

2. Channel Blocks

While PCIA supports assigning blocks of spectrum on a wide-area basis, PCIA believes that the Commission's 50 channel block proposal is too large to permit licensees to participate in wide-area licensing and create marketplace competition. PCIA supports a maximum channel block of 10 channels to be licensed in a geographic area.

⁹47 C.F.R. §90.619(b).

Smaller channel blocks allow smaller entities to participate in wide-area licensing. For example, a licensee of two five-channel systems in Wichita, Kansas would not financially be able to participate in an auction (if an auction mechanism is selected) for 50 channels in the Wichita area. The other 40 channels in the block (assuming the licensee was lucky enough to have both sets of five channels in the same 50 channel block) are valueless to this licensee, as the licensee does not have spectrum available to move incumbent licensees, regardless of whether such relocation is mandatory. However, if the same licensee is able to bid on a five or ten channel block, the licensee could select the specific frequencies of interest (for which the licensee already has transmitter based licenses) and use such channels over a slightly wider area, with flexibility in site selection, etc. In addition, the licensee would also have the ability to negotiate with co-channel licensees to combine or to have such co-channel licensees swap channels to "clean-up" channels and create larger service areas.

In addition, the use of smaller channel blocks gives larger entities the ability to select frequencies of true interest for their applications. Utilizing the Commission's proposed 50 channel blocks, an entity which is the licensee of 35 of the channels in the area will need to apply for the entire block of 50 channels, resulting in the needless bidding (in an auction) for 15 channels of no value to the applicant, as the applicant could not construct the channels anywhere in the area. This could result in the

"close-out" of the Wichita licensee above. In smaller channel blocks, however, the large entity could select the 35 discrete channels which it values from the entire band, leaving an opportunity on the other channels for other incumbents which can take advantage of wide-area licensing.

PCIA believes that smaller channel blocks minimize the need for large scale "swap-outs" and encourages marketplace forces to cause "swap-outs" on a local, individual basis to create "cleaner" channels. Under the current rules, existing independent operators can cooperate and create wide-area networks. This option can and should be continued under PCIA's plan. The proposal enables a wider pool of participants to seek licenses while at the same time minimizing marketplace disruption.

An additional advantage of the PCIA smaller block plan is that the Commission can extend the program to the 856/860 MHz SMR Pool channels, making all 280 channels available for wide-area licensing, where such licenses are of value to operators.¹⁰

The Commission argues that the 50 channel block approximates the 42 channel threshold for frequency reuse previously identified in this proceeding.¹¹ However, this analysis assumes that every

¹⁰To the extent that some spectrum remains available for licensing on a transmitter site basis, PCIA continues to believe that extended implementation should be available for qualified licensees. Transmitter site licensees, like wide-area licensees, may have a need to build-out a complicated system over a longer period of time. However, the Commission should closely review such requests to ensure that extended implementation authority is appropriate and not merely a mechanism to avoid compliance with construction rules.

¹¹FNPRM at para. 22.

wide-area applicant would seek to use a frequency reuse pattern similar that proposed by Nextel and prevalent in the cellular industry. This assumption ignores the possibility for use of other spectrum efficient technologies (such as the spread spectrum technology proposed by Geotek) which do not require cellular-like configurations.

There are numerous SMR operators who could utilize a smaller number of channels on a wide-area basis to more effectively compete in the wireless marketplace. The Commission should ensure that such operators have the opportunity to grow and expand their operations.

PCIA's plan would enable operators who desire a 42 channel block to select the most appropriate small channel blocks for their operations, considering the current licensing environment in the particular market. Thus, PCIA's plan accommodates both the large operator and the small operator.

3. General Category Channels

It has been suggested that the Commission should allocate the General Category channels solely for carrier use. PCIA opposes this concept. The General Category channels are also used by non-SMR operators. Business and Public Safety users make use of the General Category channels in many areas of the country. As discussed in PCIA Comments in ET Docket No. 94-32, wherein the Commission is reallocating federal government spectrum, there is precious little spectrum currently available to private users to meet their communications needs. Yet there are significant

spectrum needs of private users which are not satisfied by carriers.

If the Commission deems that private entities are no longer eligible for the General Category channels, spectrum on which companies such as Federal Express and Aeronautical Radio, Inc. have implemented innovative private systems will no longer be available for growth, resulting in the need for such companies to have multiple radios for use in multiple land mobile bands. While spectrum availabilities are not wide-spread on General Category channels, the limited spectrum still available should remain for use by private users.

The Commission proposed in the FNPRM that further carrier use of General Category channels be restricted. PCIA's Private System Users Alliance shares the Commission's concern that continued carrier eligibility will deplete the General Category frequencies. However, continued licensing of General Category systems on a site-by-site basis, and rigorous enforcement of the Commission's construction rules, should sufficiently keep channels available where opportunities currently exist.¹²

¹²Because the available General Category spectrum is limited, and there are no General Category channels available in major urban areas where carriers most desire spectrum, continued eligibility by carriers will have minimal impact on the future availability of such spectrum.

On this basis, PCIA strongly believes that the Commission should keep the General Category Pool licensing "as is": on a site-by-site basis, issued as single channels, with open eligibility.¹³

The General Category channels serves as a "safety valve" to permit continued growth and entry possibilities for small SMR operators. Further, numerous SMR operations already operating on General Category channels need the chance to continue to grow and expand. Finally, such channels can serve to add limited capacity in vital areas for wide-area operators. Therefore, PCIA believes that the General Category channels should continue to have open eligibility.

4. Assignment Mechanism And Opposition To Auctions

PCIA recommends that the Commission accept applications in two phases. In Phase 1, existing licensees would have the opportunity to ask for a wide-area license to convert existing operations into wide-area operations. A Phase 1 license would not be considered to be a new license. Instead, a Phase 1 license would be a modification of an existing license on such channels in the market. After licensing, operators should be permitted to work out channel-swaps or networking agreements.

In Phase 2, the Commission could accept applications for areas and frequencies which were not assigned wide-area licenses in Phase 1. A Phase 2 license would be considered to be a new license, and

¹³Provided that the Commission retains open eligibility for the General Category channels, PCIA also believes that the current rules should remain in place for the Business Pool frequencies.

would be subject to mutually exclusive applications, petitions to deny, etc.

By assigning licenses in two phases, mutually exclusive situations will be minimized, and existing licensees will experience the least disruption possible.

As expressed above, PCIA opposes the assignment of 800 MHz wide-area licenses through an auction process. First, the Commission would be prohibited by 47 U.S.C. §309(j) from conducting an auction with regard to the Phase 1 applications proposed by PCIA, as such applications would not be applications for initial licenses, but rather are applications for modification. However, issuing Phase 1 licenses in the manner suggested by PCIA would be consistent with 47 U.S.C. §309(j)(6)(E), which requires the Commission to "... continue to use engineering solutions, negotiation, threshold qualifications, service regulations, and other means in order to avoid mutual exclusivity in licensing proceedings."

Further, PCIA opposes utilization of auctions for Phase 2 licenses as PCIA believes that the Commission's auction proposal is contrary to Congressional intent and is unnecessary to serve the Commission's stated purpose to "create competition, not raise revenues."¹⁴ The House Report attached to the Budget Reconciliation Act of 1993 suggests that the Commission should avoid interruptions in the on-going filing, processing and approval of applications for

¹⁴Statement of Chairman Reed Hundt, released December 1, 1994.

licenses for existing services, and instead focus on new services such as interactive video and narrowband PCS.¹⁵

Congress clearly stated that the Commission should limit auctions to "initial" applications. Here, the Commission is issuing licenses "on top of" existing authorizations, as 800 MHz SMR Pool licenses have been issued for virtually every inhabited area of the country. Wide-area licenses issued in this proceeding are intended to act as an enhancement of an existing license in the area, permitting the licensee flexibility in modifying and constructing the facilities and relieving pressure on the Commission to rapidly issues thousands of licenses for extremely minor modifications. Thus, the wide-area licenses, either Phase 1 or Phase 2, cannot be regarded as initial licenses and should not be subject to auction.

5. Wide-Area License - Definition Of Geographic Areas

PCIA believes that the Commission's proposal to issue licenses on a Major Trading Area ("MTA") basis is too large for a reasonable build-out by licensees. An MTA license artificially limits the number of potential licensees as it forces operators in small markets to compete for licenses with operators in large markets hundreds of miles away. In addition, MTA licenses would force a potential applicant to apply for geographic areas in which the

¹⁵H.R. Rep. No. 103-111, 103d Cong. 1st Sess. (1993) at 263. Although the 800 MHz SMR service has been subject to the type of application "mills" which Congress has sought to discourage, the implementation of the wide-area licensing scheme with incumbent rights will negate the impact of future application mill filings.

applicant may not have an interest in order to acquire the license for the intended area of operation.

For example, the Dallas-Fort Worth MTA extends from Shreveport, Louisiana through Clovis, New Mexico, a distance of over five hundred miles in a direct line. Clearly, only the largest of operators could afford to build-out such a large area. Further, an operator which holds numerous licenses in the Lubbock, Texas area could not build-out the Dallas area because of incumbent licensees in Dallas.¹⁶

Although PCIA supports build-out requirements, licensing on an MTA basis with a population coverage requirement could permit licensees to build a single channel in the large population center while ignoring a large rural geographic area throughout the MTA. Thus, MTA-based licenses could lead to the warehousing of spectrum.

While PCIA believes that MTA licenses are too large, PCIA also believes that Basic Trading Area ("BTA") licenses are too small for a reasonable build-out in larger metropolitan areas. PCIA believes that BTA's divide natural operational areas in larger metropolitan areas. Further, some metropolitan BTA's are too small to accommodate even a single transmitter site.

PCIA believes that at least two geographic alternatives exist to achieve a proper balance between natural service areas and enabling multiple operators to compete.

¹⁶Even with a mandatory relocation requirement, the Lubbock operator would not have any spectrum in Dallas to relocate incumbents.

As one option, PCIA believes that the use of the Metropolitan Service Area ("MSA") concept can be utilized. First, MSA's represent more natural wireless service areas. However, in the largest urban areas MSA's are still too small for natural operational areas. In such areas, PCIA suggests the use of Consolidated Metropolitan Service Areas ("CMSA").¹⁷ Beyond CMSAs and MSAs, RSAs could be used.

A second alternative to MTAs and BTAs would be for the Commission to use the "Basic Economic Areas" ("BEA") recently defined by the Department of Commerce which is also more closely akin to the normal pattern of wide-area wireless service areas and could be utilized for the issuance of wide-area 800 MHz licenses.

III. CONCLUSION

PCIA's Comments represent a consensus position of a broad cross-section of the 800 MHz radio industry. PCIA's proposal is a plan which is fair and equitable to all participants, and accomplishes the Commission's goals in this proceeding.

¹⁷CMSAs consist of: New York/Northern New Jersey/Long Island; Chicago/Gary/Kenosha; Los Angeles/Riverside/Orange County; San Francisco/Oakland/San Jose; Dallas/Fort Worth; Houston/Galveston/Brazoria; Washington/Baltimore; Philadelphia/Wilmington/Atlantic City; Boston/Worcester/Lawrence; Sacramento/Yolo; Miami/Fort Lauderdale; Detroit/Ann Arbor/Flint; Cleveland/Akron; Cincinnati/Hamilton; Denver/Boulder/Greeley; Milwaukee/Racine; Seattle/Tacoma/Bremerton; and Portland/Salem.